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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,313	05/09/2001	Larry Harris	41872-249694	4713
7590 11/25/2003				
J. Michael Boggs Kilpatrick Stockton LLP 1001 West Fourth Street Winston-Salem, NC 27101-2400			EXAMINER COLE, ELIZABETH M	
			ART UNIT 1771	PAPER NUMBER

DATE MAILED: 11/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/852,313		HARRIS ET AL.	
	Examiner		Art Unit	
	Elizabeth M Cole		1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-67 is/are pending in the application.
- 4a) Of the above claim(s) 1-43, 48, 50, 51, 56, 58, 59, 64, 66 and 67 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 44-47, 49, 52-55, 57, 60-63 and 65 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 6) <input type="checkbox"/> Other: |

1. Applicant's election with traverse of Group II, Species A in Paper filed 10/14/03 is acknowledged. The traversal is on the ground(s) that the product could not have been made by another process. This is not found persuasive because the product as claimed could have been made by a different process such as those set forth in the requirement for restriction. The fact that the claims include process limitations does not mean that the same product could not have been made by the alternative processes set forth. Additionally, with regard to the election of species, Applicant argues that a search of the different species would not be burdensome. However, since the different species are distinct the search for each of the different species would be burdensome.

The requirement is still deemed proper and is therefore made FINAL.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 44-46, 47, 49, 52-55, 57, 60-63, 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 581,274 to Kamata et al in view of EP 436,729 to Yamato et al. Kamata et al discloses a textile material which may be formed into a garment and which is placed in a bath with microcapsules which contain a fragrance. The microcapsules are taken up by the fabric. See page 7, line 51 – page 8, line 9. Kamata differs from the claimed invention because Kamata does not teach employing a binder to further fix the microcapsules to the textile fabric and does not teach incorporating a moisturizer into the fabric. Kamata further does not teach that the textile

is hosiery. Yamato et al teaches that a small amount of a binder may be incorporated into the mixture comprising microcapsules which are to be applied to a fabric. Yamato teaches that the binder helps to adhere the microcapsules to the fabric. See page 6, lines 36-49. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed a binder in applying the microcapsules to the fabric of Kamata. One of ordinary skill in the art would have been motivated to employ a binder by the teaching of Yamato that this would further enhance the bonding of the microcapsules and the fabric. Yamato teaches that microcapsules which are applied to a fabric such as a garment may further comprise moisturizers and other skin conditioning agents in addition to fragrant components. Yamato further teaches that suitable garments to which such microcapsules could be applied include hosiery. See p. 6, lines 3-31 and p. 4, lines 5-10 and p. 5, lines 13-18. Therefore, it would have been obvious to have incorporated a moisturizer, (i.e., a humidity preserving agent), in addition to a fragrance in the microcapsules of Kamata, motivated by the expectation that this would further enhance the fabric of Kamata by making it moisturizing in addition to being fragrant. It further would have been obvious to have applied the microcapsules to hosiery as taught by Yamato. One of ordinary skill in the art would have been motivated to apply the microcapsules to hosiery because Yamato teaches that since hosiery is in direct contact with skin, the fragrant, moisturizing microcapsules would be most effective.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (703)

Application/Control Number: 09/852,313

Page 4

Art Unit: 1771

308-0037. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (703) 308-2414.

Inquiries of a general nature may be directed to the Group Receptionist whose telephone number is (703) 308-0661.

The fax number for all official faxes is (703) 872-9306. The fax number for unofficial faxes is (703) 305-5436.



Elizabeth M. Cole
Primary Examiner
Art Unit 1771

e.m.c